IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14856 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PROP.OF AMIDHARA APPARALS ANISH RAMESHCHANDRA SHAH

Versus

PRAGATI COPERATIVE BANK LTD. THRO'ITS MANAGER

Appearance:

1. Special Civil Application No. 14856 of 2004

MS ROOPAL R PATEL for Petitioner No. 1

MS ARCHANA U AMIN for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. The petitioner has by way of this petition challenged the order dated 8th September, 2004 passed by the Gujarat State Co-operative Tribunal, in Appeal No. 663 of 2003, whereby the Tribunal has dismissed the appeal on the ground of delay.

2. I have heard the learned advocate for the respective parties and have perused the relevant record. It appears that the Tribunal has rejected the appeal on the ground of delay, though it ought to have been considered, in view of the fact that the respondents have not filed their reply to the said application. Apart from that in view of the decision of the Apex Court in the case of Collector Land Acquisition, Anantnag v. Katiji reported in A.I.R. 1987 S.C. p.1353, the delay caused in preferring Appeal ought to have been granted by the Tribunal.

3. Looking to the peculiar facts and circumstances of the case, a consensus has been arrived at between the parties on the basis of which the impugned order is required to be quashed and the matter is remanded to the Tribunal for fresh decision.

4. In view of the above, the petition is partly allowed. The impugned order dated 8th September, 2004 passed by the Tribunal is quashed and set aside.

4.1. The matter is remanded to the Tribunal for deciding the Appeal afresh. However, it is directed that the Tribunal shall consider the same on merits and in accordance with law, without being influenced by the earlier order which is quashed in the present petition, as well as the present order, since the same is passed without entering into the merits of the case.

5. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]
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